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No. 86-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. AND KONKAR RESOLUTE CORPORATION,
Petitioners,

v.

AMALIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU,
Respondents.

PETITIONERS' REPLY BRIEF

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL AND LABORDE
430 Notre Dame Street
New Orleans, LA 70130
(504) 524-9714

Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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PETITIONERS' REPLY BRIEF

ARGUMENT

In respondents' brief they make certain preliminary assertions which they term "corrections" to the Statement Of The Case set forth at pages 4 through 8 of the petition for writ of certiorari. The first of these "corrections" evidences respondents' confusion as to the special application of *forum non conveniens* in

foreign seamen claims and in a maritime setting. The refusal to recognize the difference between the doctrine of *forum non conveniens*, which is akin to simple change of venue (like 28 U.S.C. §1404[a]), and the doctrine as applied in maritime and foreign seamen claims, is the core of the dispute before this Honorable Court.

Respondents argue that the federal district court in New York and the United States Court of Appeals for the Second Circuit did not determine that the laws of the United States were inapplicable to plaintiffs' claims. Respondents attempt to support this statement by pointing out that the opinions of those courts contain "only traditional *forum non conveniens* analysis and no definitive choice of law analysis or holding demonstrating inapplicability of United States law." (Brief in opposition, at 2). From this statement it appears respondents admit that the doctrine of *forum non conveniens* as applied in maritime and foreign seamen claims is different and more complex than the "traditional *forum non conveniens* analysis." This is precisely the position urged by petitioners. As this Honorable Court has long held, a detailed choice of law analysis is the first step in determining the propriety of dismissing a foreign seaman's claim on the basis of *forum non conveniens*. *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953); *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970). Once that choice of law question is resolved, then the balancing test mandated by *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and its progeny, is applied to determine whether the case should be dismissed in favor of a more appropriate forum.

Although the choice of law analysis was not specifically outlined in the opinions of the New York courts, the outcome of that choice of law analysis is implicit in their holdings. The New York federal district court cited *Koupetoris v. Konkar Intrepid Corp.*, 402 F.Supp. 951 (S.D. NY 1975), *aff'd*, 535 F.2d 1392 (2nd Cir. 1976) as the appropriate analysis which it followed (Appendix, at 17a and 18a). *Koupetoris* applied the mandated choice of law analysis and determined that neither the Jones Act nor the general maritime law of the United States was applicable to plaintiff's claims. The Court of Appeals for the Second Circuit affirmed the analysis of the district court, and also cited *Koupetoris* (Appendix, at 19a and 20a). The choice of law analysis outlined by this Honorable Court for resolving the plea of *forum non conveniens* in foreign seamen claims was followed by the New York courts and the Louisiana trial court, as this matter involves much more than simply a transfer of litigation when it is clear United States law will apply.

Fueled by loose jurisprudential language which fails to distinguish between the various applications of *forum non conveniens*, respondents argue that foreign seamen claims should be treated just as FELA and other claims insofar as the doctrine of "*forum non conveniens*" is concerned. In support of their position, respondents rely heavily upon the decision in *Missouri ex. rel. Southern Railway Company v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed. 3 (1950). Even a cursory reading of *Mayfield* reveals that it did not address the issue presented by the instant litigation. The doctrine of *forum non conveniens* as it relates to foreign seamen claims clearly is distinguishable and vastly more extensive than the very limited issue presented

sented in *Mayfield*—whether a FELA cause of action could be brought in Missouri state court by a plaintiff who was not a resident of Missouri. There was never any question as to whether FELA, or any other law of the United States, was applicable. In foreign seamen claims, such as those scrutinized by *Lauritzen, Rhoditis* and their progeny, the core issue is whether or not U.S. law and the Jones Act should even apply. This is an analysis which is peculiar to the admiralty and maritime law and its treatment of *forum non conveniens*. This issue was never addressed in *Mayfield*. Unlike foreign seamen claims, *Mayfield* never had to decide whether FELA, as opposed to the law of a foreign sovereign, was applicable.

Respondents next cite *Norfolk and Western Railway Company v. Beatty*, 400 F.Supp. 234 (S.D. Ill. 1975), *aff'd*, 423 U.S. 1009, 96 S.Ct. 439, 46 L.Ed.2d 381 (1975), for the proposition that *Mayfield* "held" that state rules on *forum non conveniens* govern FELA and Jones Act matters. This is not the holding of either *Beatty* or *Mayfield*. The language quoted from *Beatty* is nothing more than dicta which misconstrues the *Mayfield* decision. Neither *Mayfield* nor *Beatty* stand for the proposition that a state is free to reject the long established doctrine of *forum non conveniens* as it relates to choice of law and the treatment of maritime and foreign seamen claims. Such a rejection would fly in the face of our courts' efforts to preserve uniformity in maritime matters.

Respondents end their opposition by citing *Red Cross Line v. Atlantic Fruit Company*, 264 U.S. 109, 44 S.Ct. 274, 68 L.Ed. 582 (1924) and *Just v. Chambers*, 312 U.S. 383, 61 S.Ct. 687, 85 L.Ed. 903 (1941) for the proposition that uniformity of decision in mar-

itime matters is not of grave importance and should not be a factor in the instant litigation. However, both *Red Cross* and *Chambers* recognize, and do not alter, the long established rule that restricts a state from taking any action to "contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations." *Chambers*, 312 U.S. at 389.

CONCLUSION

Much of the problem encountered throughout the course of the instant litigation stems from the fact that the term "*forum non conveniens*" has been used very loosely in the jurisprudence and by respondents. The term has been used to describe the change of venue provision contained in 28 U.S.C. §1404(a), as well as the more extensive doctrine which has been fashioned to apply to foreign seamen claims. This is evidenced by the fact that the law review article, Currie, "Change of Venue and the Conflict of Laws," 22 U.Chicago L.Rev. 405, 415 (1955), cited at pages 6 and 7 of respondents' opposition deals with §1404(a) and not the doctrine of *forum non conveniens* which is applied to claims involving foreign seamen. Because of this inconsistency, cases exist which can be cited for the proposition that "*forum non conveniens*" is a matter for the states to apply, or not apply, as they see fit. However, these cases, like *Mayfield* and *Beatty*, do not deal with foreign seamen claims or the detailed *Lauritzen/Rhoditis/Gilbert* analysis. Clearly, *Lauritzen/Rhoditis/Gilbert* use the term "*forum non conveniens*" to encompass more than a venue determination. *Forum non conveniens* as discussed by

Lauritzen/Rhoditis/Gilbert involves a detailed choice of law analysis which has been fashioned by the federal courts and must be applied by the state courts hearing foreign seamen claims. It is an analysis which has become a characteristic feature of the maritime law, and which properly was applied by the Louisiana trial court. Failure of the Louisiana appellate court to uphold the trial court's application of that doctrine establishes an impermissible conflict between state and federal courts hearing identical maritime claims.

Respectfully submitted,

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL
AND LABORDE
430 Notre Dame Street
New Orleans, LA 70130
Telephone: (504) 524-9714

Attorneys for Petitioners